
(2009) 07 AHC CK 0350

In the Allahabad High Court

Case No : Criminal M. A. Nos 22773 of 2008 and 2938 of 2009

Sushil and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2009) 3 ACR 2689

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : S.K. Pandey, for the Appellant; Manju R. Chauhan and A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—During the course of hearing of Criminal Misc. Application No 2938 of 2009, it was contended that Criminal Miscellaneous Application No 22773 of 2008, Umesh and Ors. v. State of U. P. and another, pending in this Court have been filed by the accused of cross case and they have got a stay order of the proceeding of the cross version and therefore the applicants Shushil and Pramod should also be granted stay order. On such an argument, Criminal Miscellaneous Application No. 22773 of 2008, Umesh and Ors. v. State of U. P. and another, was directed to be clubbed along with the present Criminal Miscellaneous Application and in agreement with counsels for the applicants in both the above applications, these applications are being decided by this common order.

2. In Criminal Miscellaneous Application No. 2938 of 2009, the two applicants sibling brothers Shushil and Pramod have prayed for quashing of proceeding of S. T. No. 523 of 2008, State v. Shushil and others, under Section 307/504, I.P.C., police station Tundla, district Firozabad, pending against them in the Court of Additional Sessions Judge, Firozabad.

3. In nutshell, allegations by the prosecution against these two applicants are that on 28.2.2007 at about 7 p.m., near Anamika Talkies, they fired upon Gauri

Shankar, brother of informant Rajesh Kumar, from rifle and country made pistols joined by Sant Kumar and Nainsukhpal, their two other brothers. Fire made by the applicant Shushil from his rifle caused injuries to Gauri Shankar, who fell down and cried for help, which attracted informant, Satish, Manish, Dara Singh and other co-villagers at the spot, on which assailants made their escape good. Injured was transported to the police station Tundla, where the F.I.R., Annexure-1, was lodged by Rajesh Kumar after getting it scribed from Satish Kumar. The offence was investigated and concluding the same a charge-sheet, Annexure-2, was laid in court on 17.6.2007, against the two applicants, on which cognizance was taken by the Court on 17.8.2007 and they were sent up for trial before Additional Session's Judge, Court No. 2, Firozabad, who framed charges against them for offences u/s 307/34/504, I.P.C. and fixed 20.1.2009 for prosecution evidence. At this stage, the applicants have approached this Court for quashing of their prosecution of the said Sessions trial.

4. In Criminal Miscellaneous Application No. 22773 of 2008, Umesh and Ors. v. State of U. P. and Anr. 23 named applicants namely Umesh, Amar Singh, Rajesh, Mukesh (all sons of Nathi Lal), Satish, Ravish, Manish, Subhash (all sons of Mahaveer Prasad), Mahaveer son of Ram Swaroop, Gauri Shankar, Lakhan Singh (Both sons of Sunahari Lal), Ram Naresh son of Suresh, Gappu, Karuwa, Rainu (all sons of Amar Singh), all the above resident of Gadhi Tola, M. P. Road, Tundla, district Firozabad, Mahendra Pratap alias Babloo and his father Hanuman Prasad, both resident of Gulab Nagar, Om Prakash, Har Vilas (Both sons of Genda Lal), Pappu Chak, his younger brother, Rajesh, Manoj and 30-40 persons, known persons, have prayed to quash the order dated 16.8.2007 passed by Chief Judicial Magistrate, Firozabad, in Case No. 2202 of 2007, State v. Mahaveer and others, (relating to Crime No. 224 of 2007), under Sections 147/148/149/307/323/ 336/436/511/427/504/506, I.P.C., Police Station Tundla, district Firozabad alongwith the prayer for stay of the proceeding of the lower court.

5. Main allegations, in an abridged form, against these applicants accused are that on 28.2.2007 at 7 p.m., by forming an unlawful assembly, they raided the house of informant Smt. Ravita Chak (wife of Shushil applicant in Criminal Miscellaneous Application No. 2938 of 2009), situated in Gulab Nagar, Near Anamika Talkies, Police station Tundla district Firozabad, along with other non-applicant accused persons, and assaulted the informant, her husband Shushil Kumar Chak, (applicant in Criminal Miscellaneous Application No. 2938 of 2009), her Dewar Pramod (another applicant in the said tagged up Criminal Miscellaneous Application), his wife Bharti, with kicks and fists. By resorting to brick bats they committed mischief and destroyed informant's house hold articles. Subhash and Satish fired at Shushil but he escaped the shots. Rajendra Prasad, Rajesh Kumar, Sanjai, Sanjiv Sharma, and many other neighbours collected at the spot, on which raiders ran away, threatening that the informant and his family members will be murdered in future. Police was informed by Smt. Ravita Chak, which arrived at the scene of the incident but arrested the husband

and Dewar of informant, took them to the police station and locked them up in a false case. The written report by Smt. Ravita Chak was stamped but was not registered by the police. Subsequently, on 1.3.2007, because of non-registration of the crime, the aforesaid accused persons fired upon the informant in the afternoon at 12, causing her injuries, regarding which she lodged another F.I.R., Annexure -SA3, the same day, u/s 307, I.P.C. and got herself medically examined. In the said offence charge-sheet already has been filed against accused Umesh only vide Annexure-12 to the affidavit filed in support of this Criminal Miscellaneous Application.

6. With above allegations, Smt. Ravita Chak, approached Chief Judicial Magistrate, Firozabad, u/s 156(3), Cr. P.C., to get her F.I.R. registered. It transpires that her F.I.R. was registered as Crime Number 224 of 2007, under Sections 147/ 148/ 149/ 307/ 323/ 336/ 436/ 511/ 427/ 504/ 506, I.P.C. at Police Station Tundla, district Firozabad on 1.5.2007 at 6.20 p.m. vide Annexure-1 to the affidavit. In their 161, Cr. P.C. statements the informant, her husband and Dewar supported F.I.R. allegations. However other witnesses Sanjiv Kumar, Ram Babu etc. did not support informant's case. Investigating Officer concluded that the informant's case was false and hence he forwarded a final report, Annexure-6, to the Court on 23/28.5.2007 on the basis of which Case Number 2202 of 2007, State v. Mahaveer and others, was registered in the Court of C.J.M., Firozabad. vide Annexure-14, informant laid a protest petition before the C.J.M. against submission of Final Report by the Investigating Officer along with her affidavit, which protest petition of her's was allowed and the applicants accused were summoned by the C.J.M. , Firozabad, vide his order dated 16.8.2008, Annexure-15 to the affidavit, for the offences mentioned above. Hence, the applicants have approached this Court for quashing of the proceeding pending against them. Through a supplementary report, injury reports of the informant, and her X-ray report have been filed by the applicants along with other documents.

7. On the above factual matrix I have heard Sri Sanjeev Kumar Pandey in support of Criminal Miscellaneous Application No. 2938 of 2008 as well as Smt. Manju R. Chauhan in support of Criminal Miscellaneous Application No. 22773 of 2008, and learned A.G.A. in opposition in both Criminal Miscellaneous Applications.

8. Both the learned Counsel for the applicants argued the same argument of levelling allegation on the other side of falsely implicating their clients. They further contended that the F.I.R. lodged by the respective clients is the true version and the proceedings initiated by the other side is a mala fide one. It is further submitted by Smt. Manju R. Chauhan that the proceeding against their clients have been initiated on the basis of an application u/s 156(3), Cr. P.C. and therefore, the mala fide on the part of informant is writ large. She further contended that implicating the whole village is also writ large on the face of the record and therefore, the proceeding be quashed. She further contended that the

police after investigation had found the case of Smt. Ravita Chak to be false and, on the protest petition, the applicants have been summoned, She, therefore, submitted that the proceeding initiated against the applicants in Criminal Miscellaneous Application No. 22773 of 2008 be quashed.

9. Sri Sanjeev Kumar Pandey raised the same argument and submitted that the accused persons had raided the house of Sushil and Pramod, assaulted the inmates and had destroyed the house hold articles, as they have falsely implicated.

10. I have considered the argument raised by both the sides. From the narration of facts and the case taken up by the applicants in both the applications, it is crystal clear that both the cases are cross version of each other. In both the applications the incident is alleged to have occurred on 28.2.2007 at 7.00 p.m. near Anamika Talkies and hence time, place and happening of the incident is admitted. Both the contesting sides have got their own version and the manner in which the incident occurred. According to one side, Gauri Shankar was beaten by Sushil and Pramod while other side had taken up the case that Gauri Shankar formed an unlawful assembly with other accused persons and raided the house of the applicants. Both sides have got themselves medically examined. Against Sushil and Pramod charge under Sections 307/34 and 504, I.P.C. has already been framed by the Additional Sessions Judge, Court No. 2, Firozabad where as the rival side has been summoned by the C.J.M. for the offences under Sections 147/148/ 149/307/323/336/436/511/427/ 504/506, I.P.C. Thus, each one of the applicants in the two applications have their respective versions regarding the incident which did take place. Along with Criminal Miscellaneous Application No. 2938 of 2009 these two accused applicants, Shushil and Pramod have not filed any injury report or any other material collected during investigation to indicate that no offence against them is made out. The trial Judge has looked into the material collected during investigation as is contained in the case diary, and had framed charges against them for offence of attempt to murder. It cannot therefore be said that no offence is made out or that the prosecution of the applicants is mala fide or vexatious. In such a view, the aforesaid Criminal Miscellaneous Application No. 2938 of 2009, Shushil and Anr. v. State of U. P. and another, is bereft of merits and is also based on suppression of material evidences and therefore, the contention of the applicants in the aforesaid criminal miscellaneous application that no offence is made out cannot be judged. Moreover, once there is a cross case, the happening of the incident is admitted. The allegation in one case is the defence of the accused in other case. Both the sides had got themselves medically examined. Once the happening of the incident is admitted, there does not arise any question of quashing the proceeding. In such a view criminal miscellaneous application No. 2938 of 2009 stands vacated.

11. For the above reasons Criminal Miscellaneous Application No. 22773 of 2008, Umesh and Ors. v. State of U. P. and another, also stands dismissed, as the

quashing of the cross version will definitely prejudice the right of the accused in cross case. If the happening of the incident is admitted, which version is correct, has to be looked into by the trial court. Both the sides must be afforded an opportunity to substantiate their version. Further, the array of applicants in the said application indicates that some of the applicants were wrongly described. Learned Counsel for the applicants was not careful in drafting the application. Applicant No. 21 is a wrong party. He had to be described by his name. Moreover a counsel cannot hold the brief of a client without knowing his parentage. Applicant No. 24 is not understandable as "30-40 persons unknown" cannot be the applicants. On the merits Criminal Miscellaneous Application No. 22773 of 2008 also stands dismissed and interim order dated 19.9.2008, granted by this Court stands vacated.

12. Both the trials are directed to be tried by the same court one after another and the judgment be pronounced on the respective merits of each case on the same day.

Both the above Criminal Miscellaneous Applications are dismissed.